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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,680	02/01/2002	Paul R. Jarko	1992-A	2184
7590	12/02/2004		EXAMINER	
Joseph A. Sebolt SAND & SEBOLT Aegis Tower 4940 Munson St. NW, Suite 1100 Canton, OH 44718			VANAMAN, FRANK BENNETT	
			ART UNIT	PAPER NUMBER
			3618	
DATE MAILED: 12/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/062,680	JARKO ET AL. <i>SD</i>	
	<b>Examiner</b>	<b>Art Unit</b>	
	Frank Vanaman	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 September 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 and 16-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-3, 8, 10, 12 and 17-20 is/are allowed.
- 6) Claim(s) 4-7, 13, 16, 21-29 is/are rejected.
- 7) Claim(s) 9, 11 and 30-32 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**Status of Application**

1. Applicant's amendment, filed Sept. 1, 2004, has been entered in the application. Claims 1-13, 16-32 are pending.

**Claim Rejections - 35 USC § 103**

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 7, 22, 24, 25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al. (EP 0 955 224).  
Salmon et al. teach a cart which accommodates at least two recycling containers (70) which have a generally parallelepiped format with downwardly tapering side walls (e.g., fig. 1 – and inherently understood to have a bottom wall so that they can function as containers), the cart having an upright frame (16, 40, 50, etc.) and including a plurality of vertically arranged and aligned support shelves (42) each of which is taught to be able to accommodate one container (see col. 4, lines 13-15), in a stacked configuration, such that the containers may be slid in and out of the cart (fig. 3), a lid (48) mounted to the top of the cart for movement between an open and closed position, the closed position covering the top of a container (70) when placed on the top most shelf (42) and having a shape which complements the shape of the container top portions, a pair of wheels (32), and a further receptacle location opposite the shelves (e.g., between 50 and 36) for accommodating newspapers, which extends downwardly from the top of the cart to its base. The reference to Salmon et al. fails to teach the shelves having a front rim and being formed with a plurality of holes. Rauschenberger et al. teach a cart construction wherein shelves (e.g., 2, 3) are provided with a front rim (see, e.g., figure 1; proximate numeral 16, which appears to identify the entire rim) and a plurality of holes (e.g., 17). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the shelves of the cart of Salmon et al. with holes as taught by Rauschenberger et al., for the purpose of providing shelves having a lighter weight. As regards the mating engagement of the lid and a container on the uppermost shelf, in

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that the distance between the underside of the cover (48) and the top surface of the topmost shelf (42) is approximately the same as the height of the illustrated containers, and in that Salmon et al. teach that each of the shelves may accommodate a container, it would have been obvious to one of ordinary skill in the art at the time of the invention to adjust the height of the top of the cart (and thus the underside of the lid 48 so as to matingly engage and close a container placed on the uppermost shelf, for the purpose of protecting the contents of the container from the elements, should the cart be stored outside.

4. Claims 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al. and Roman (US 5,707,030). The reference to Salmon et al. as modified by Rauschenberger et al. is discussed above and fails to teach the cart as having an inverted U-shaped frame formed of metal, and wherein the shelves and containers are formed of a plastic such as polypropylene. As regards the provision of a tubular metal U-shaped frame, the reference to Roman teaches a cart having a pivotable top, wherein the cart includes a U-shaped frame (3) made from tubular metal. It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the frame portion of the cart of Salmon et al. (e.g., 16, 52, 50, etc) from a bent U-shaped tubular metal piece such as taught by Roman, for the purpose of providing a rigid frame of lighter weight than the panel styled frame taught by Salmon et al.

As regards the shelves and containers, while Salmon et al. fail to teach the specific material from which they are made, the use of plastics such as polypropylene is old and well known in the manufacturing arts, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the shelves and containers from a plastic material such as polypropylene for the purpose of reducing manufacturing costs.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al. and Toggweiler (CH 310,381). The reference to

Salmon et al. as modified by Rauschenberger et al. is discussed above and fails to teach the side members as including a plurality of holes for allowing adjustment of the shelves. Toggweiler teaches a mounting scheme wherein shelves (e.g., 25) may be adjustably mounted on two side members (17) of a cart, in an adjustable fashion, through the use of a plurality of holes (20). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a plurality of holes as taught by Toggweiler in the side mounting portions of the cart of Salmon et al., as modified by Rauschenberger et al. for the purpose of allowing the height of any of the shelves to be adjusted to the user's desire, facilitating flexibility in the objects or containers which may be accommodated therein.

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al. , Roman (cited above) and Streit et al. (US 4,319,762). The reference to Salmon et al. as modified by Rauschenberger et al. fails to teach the lid as having a dome-shape. Roman teaches a cart having a pivotable lid (12) which has a domed profile. It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the lid of Salmon et al. as modified by Rauschenberger et al. to have a dome-shaped profile as taught by Roman for the purpose of providing a stronger molded element and to reduce the tendency of water to pool on the lid top if the cart is used outdoors. The reference to Salmon as modified by Rauschenberger et al. and Roman fails to teach a latch which engages a container placed below. Streit et al. teach a wheeled cart including a container (4) which may be covered with a pivoting lid (16) which is provided with a latch (25, 26) for engaging the container rim (13). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cart of Salmon et al. as modified by Rauschenberger et al. and Roman with a latch connected to the lid, for engaging at least one container there-below, as taught by Streit et al., for the purpose of insuring that the lid remains closed, thus limiting casual access.

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7. Claims 4-6 and 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al., Shyshka et al. (CA 2,271,906) and Barnes (US 5,230,282). The reference to Salmon et al. as modified by Rauschenberger et al. is discussed above and fails to teach the receptacle as including a U-shaped metal element with a straight first side, a curved bottom, a second side which terminates in a top end which has an outwardly curved configuration, with the second side being biased towards the first side by the curvature of the bottom. Shyshka et al. teach a spring steel paper product holding device for a recycling cart, including a U-shaped metal element (550) with a straight first side (551), a curved bottom (553), a second side (555) which terminates in a top end (558) which has an outwardly curved configuration, with the second side being biased towards the first side by the curvature of the bottom. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the receptacle portion of the cart of Salmon et al. as modified by Rauschenberger et al. with the spring-steel holding device taught by Shyshka et al. for the purpose of positively gripping any items placed therein.

The reference to Salmon et al. as modified by Rauschenberger et al. and Shyshka et al. fails to specifically teach the receptacle element as including a mesh screen and including a slot through which a cord may be positioned. Barnes teaches a receptacle having first (16) and second (23, 25), outwardly projecting sides, a bottom (e.g., 17) which may be U-shaped (col. 3, lines 39-40), the basket further having slots (e.g., between 23, 25) which allows the passage of cord (34- note also figures 4, 5), a cord container (30) which may be provided with a cutter (col. 4, line 43), wherein both the cord container and the basket itself (see col. 4, line 48 and col. 4, lines 2-5) may be made from a mesh material. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the holder of Shyshka et al. as applied to the cart of Salmon et al. as modified by Rauschenberger et al. with a mesh structure as taught by Barnes, for the purpose of insuring that the holder can accommodate paper products having a longest dimension which is less than the side-to-side spacing of the elements of the holder of Shyshka et al.

8. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view Rauschenberger et al. and Barnes. The reference to Salmon et al. as modified by Rauschenberger et al. is discussed above and fails to teach the provision of a cord holder and cutter mounted on the lid. Barnes teaches a receptacle which can be used with a cord container (30) which may in turn be provided with a cutter (col. 4, line 43), wherein both the cord container and the basket itself (see col. 4, line 48 and col. 4, lines 2-5) may be made from a mesh material. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cart of Salmon et al. as modified by Rauschenberger et al. with a cord holder and cutter as taught by Barnes in order to facilitate the bundling and tying-up of recycled paper products.

While the references of Salmon et al., Rauschenberger et al. and Barnes fail to specifically teach a particular location for the cord holder, it would have been obvious to one of ordinary skill in the art at the time of the invention to locate the holder in an upper most location with respect to the other containers on the cart, and as such, to thusly locate it on the lid, so as to promote easy access to the cord holder and cutter when bundling items.

9. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al. and Streit et al. The reference to Salmon et al. is discussed above and fails to teach a latch on the lid which is configured to engage a container rim. Streit et al. teach a wheeled cart including a container (4) which may be covered with a pivoting lid (16) which is provided with a latch (25, 26) for engaging the container rim (13). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cart of Salmon et al. as modified by Rauschenberger et al. with a latch connected to the lid, for engaging at least one container there-below, as taught by Streit et al., for the purpose of insuring that the lid remains closed, thus limiting casual access.

#### **Allowable Subject Matter**

10. Claims 1-3, 8, 10, 12, and 17-20 are allowed.

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11. Claims 9, 11, and 30-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Response to Comments**

12. Applicant's comments, filed with the amendment, have been carefully considered. As regards the reference to Salmon teaching each and every limitation of claim 22 as now amended, the examiner agrees that Salmon et al. do not teach all such limitations. Note the reference to Rauschenberger et al., which teaches the provision of a rim. Applicant has argued that the reference to Rauschenberger et al. fails to teach this limitation (second page of the remarks, lines 7-11), although the examiner does not agree with this characterization in view of the clear presence of a rim as shown in Rauschenberger et al.'s figure 1. The examiner notes additionally that it is exceptionally old and well known to provide a rim on a shelf in order to prevent objects from falling off such shelves, and it is not clear whether this is deemed to be the inventive feature of applicant's invention. As regards the positioning of a container on the uppermost shelf, note that the presence or absence of a container on the topmost shelf 42 of Salmon et al. cannot be easily determined from figure 1 as applicant has alleged, inasmuch as the front portion of the cover 48 extends downwardly to the height of the top most shelf (see col. 4, lines 4-6). All of the shelves of Salmon et al. are intended to support containers as can be ascertained from the specification at col. 4, lines 13-15. As regards the mating engagement, this is deemed to constitute an obvious modification, in view of the distance between the uppermost shelf and the top of the side walls (and thus the bottom of the cover) being closely similar to the height of the containers schematically illustrated in Salmon et al.

### **Conclusion**

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 703-308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326  
After Final Amendments: 703-872-9327  
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F. VANAMAN  
Primary Examiner  
Art Unit 3618



The image shows a handwritten signature in black ink, appearing to read "F. VANAMAN" above "Art Unit 3618". Below the name is a date, likely "5/29/04", written in a cursive style.